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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,820	11/12/2003	Lane A. Bray	480220.407	8816

500 7590 09/07/2007
SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 5400
SEATTLE, WA 98104

EXAMINER

LACYK, JOHN P

ART UNIT	PAPER NUMBER
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3735

MAIL DATE	DELIVERY MODE
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09/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,820

Applicant(s)

BRAY ET AL.

Examiner

John P. Lacyk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-123 is/are pending in the application.
- 4a) Of the above claim(s) 1-43 and 62-123 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3. Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :11/12/03; 2/17/04; 5/25/05; 9/29/06.

1. Applicant's election of Group II, claims 44-61 in the reply filed on 06/05/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 1-43, 62-123 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06/05/07.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 44-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziegler et al (6,485,406) in view of Glajch et al (6,455,024).

Ziegler et al discloses a radioactive seed that is enclosed in a sealed metallic cylinder.

(1) having a radioactive core therein, wherein the core includes a marker (3) and a tube (2) that has an inorganic material, which has a ceramic coating containing a radioactive material. The markers can be rods, tubes or beads (or balls). Ziegler et al discloses the claimed device except for specifically disclosing the inorganic material specifically being an inorganic amorphous silicate glass tube, however Ziegler does state that "any porous and mechanically stable inorganic material may be used which does not absorb the low-energy gamma radiation" (column 3, lines 50-54). Glajch et al discloses a

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similar radioactive seed and teaches using inorganic materials that are coated with a radioactive material and teaches (column 5, lines 10-50) that the inorganic material used can be an amorphous or glass state. While glass may not be the most preferred material, Glach et al clearly teaches that it is known to use a inorganic amorphous glass material that is coated with a radioactive material. Therefore a modification of Ziegler et al such that the inorganic material used is glass would have been obvious since Ziegler et al states that any porous material may be used and Glajch et al teaches that it is known to use a inorganic amorphous glass having a radioactive coating for radioactive seeds, this would be the mere substitution of one well known inorganic material for another.

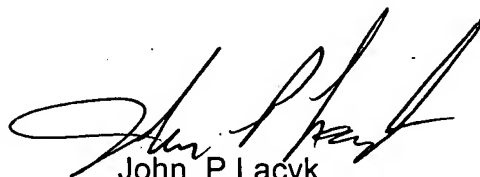
With respect to claims 45-48, to use any known particular inorganic glass and/or specific ceramic material would have been obvious based upon its suitability for the intended use. Also with respect to the amount of coating and/or thickness, where the general conditions are disclosed to determine the optimum or workable ranges through routine experimentation is considered to be an obvious expedient to one skilled in the art and would have been obvious (In re Aller et al 105 USPQ 233).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Lacyk whose telephone number is 571-272-4728. The examiner can normally be reached on Mon-Fri, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chuck Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John P Lacyk
Primary Examiner
Art Unit 3735

J.P. Lacyk